



SENTENCING IN WISCONSIN

Snapshots of Information on Wisconsin Sentencing

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Additional Factors Considered at Sentencing

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The purpose of this Snapshot is to provide information on a segment of the Wisconsin Sentencing Guidelines Worksheet that pertains to sentence adjustment factors. On the worksheet, judges are asked to identify appropriate sentence ranges based on offense severities and risks to re-offend. After the initial assessment, judges then have the option to amend the sentence length based on one or several of the additional factors listed below. This segment of the worksheet acknowledges that there may still be some legitimate factors in need of consideration at the time of sentencing that do not pertain directly to offense severity or risk assessment.

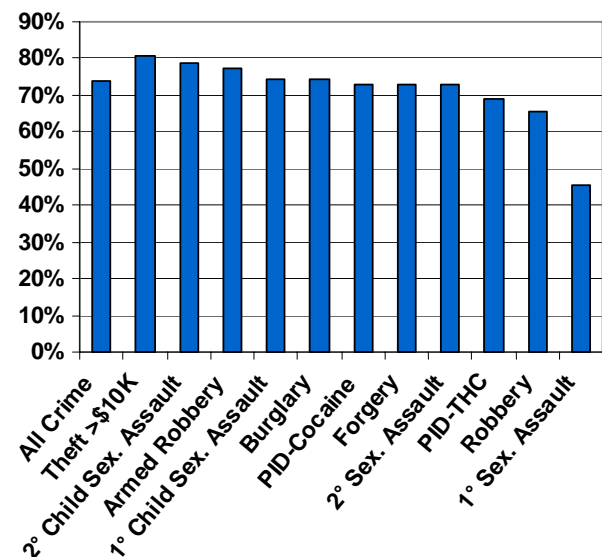
The additional factors recognized by the Worksheets include¹:

- **Read-in Offenses:** references to previous offenses or arrests which may increase the sentence or the conditions of probation/extended supervision.
- **Effect of Multiple Counts:** a sentence for multiple offenses may require an increase if the sentences are imposed concurrently or reduction if the sentences are imposed consecutively.
- **District/Defense Attorney Recommendation:** the court may give weight to an attorney's recommendation if the reasoning is well-founded
- **Restitution Paid at Great Sacrifice:** related to acceptance of responsibility
- **Acceptance of Responsibility:** if deemed appropriate, a sentence may be reduced when the defendant accepts responsibility, expresses genuine remorse, or exhibits a lesson learned.
- **Cooperation with Authorities:** a sentence may be reduced when the defendant has

provided valuable services to law enforcement authorities.

- **Habitual Criminality:** a sentence exceeding the maximum penalty may be imposed by provision of the Habitual Criminality Statute (§939.62) or the Drug Repeater Statute (§961.48).
- **Other:** any other mitigating or intensifying circumstances considered by the court.

FIGURE 1:
Percent of Sentences to Receive Adjustments



As of April 6, 2005, the Commission has collected data from the courts on 1,760 offenses. 1,301 (74%) indicated the use of at least one of these additional factors in imposition of the sentence. Theft had the highest frequency of sentence adjustments (81% of cases), and 1st° Sexual Assault had the lowest frequency (45% of cases) (see Figure 1). What is significant, however, is that with the exception of 1st°

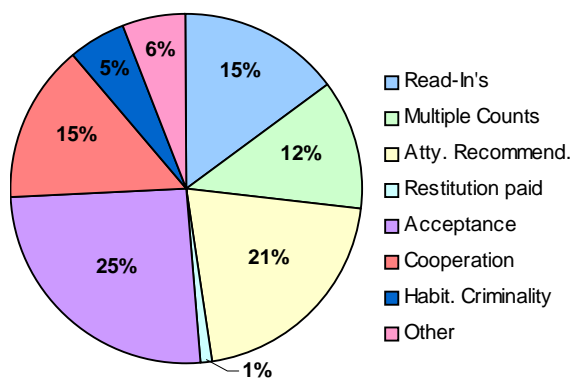
Sexual Assault, all offenses indicated a similar frequency of sentence adjustment use, as shown below.

Thus far, two important observations can be made:

- 1) Judges do not appear to be applying sentence adjustments any more or less severely depending on the violent or non-violent nature of an offense.
- 2) Data on sentence adjustments does not appear to be skewed by the total number of cases collected for that particular offense, perhaps with the exception of the two extremes, Theft and 1st Sexual Assault, which rank 9th and 11th respectively in terms of Worksheets collected.

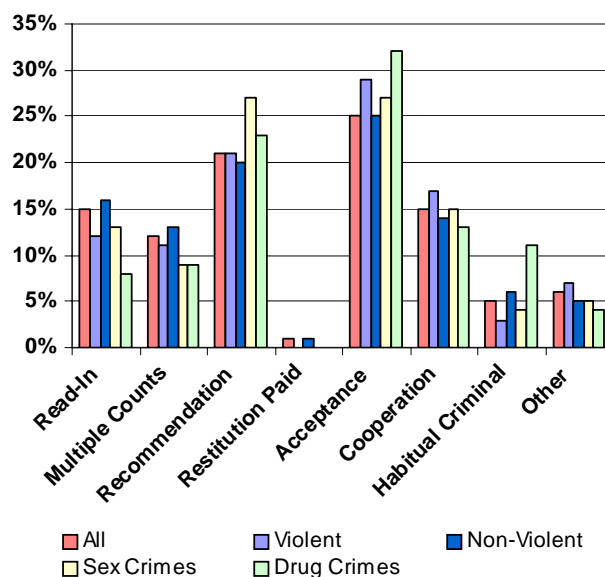
The most frequently cited factor to warrant sentence adjustment was *Acceptance of Responsibility* (see Figure 2). The least common factor cited was *Restitution Paid at Great Sacrifice*. Only 1% of all adjustments cited fell under this category, which supports the Commission's initial concern that the language of "great sacrifice" is inherently qualitative and problematic.

**FIGURE 2:
Additional Sentencing Factors Cited**



A significant finding of this snapshot is that the proportion of the figure above made up by individual sentencing factors remains surprisingly consistent when crime figures were separated into various groups (see Figure 3). Across crime types, *Acceptance of Responsibility* remained most common, *Attorney Recommendation* remained second most common, and so on. The only significant outlier was *Habitual Criminality* among Drug Crimes, which is perhaps to be expected in crimes that include an element of addiction.

**FIGURE 3:
Adjusted Sentences by Factor & Crime Type**



In cases where any adjustment was mentioned at all, the average number of adjustment factors cited per case was 2.4. The factor that matched with at least one other factor the most was *Acceptance of Responsibility*. It is also noteworthy that *Acceptance of Responsibility* comprised one quarter (25%) of all the cases in which only one adjustment factor was cited.

¹ See *Wisconsin Sentencing Guidelines Notes*, 19-21

The Wisconsin Sentencing Commission periodically publishes "Sentencing in Wisconsin" to provide the public, state courts, and policymakers data on state sentencing practices. For other publications, or more information about the Commission, see its website, <http://wsc.wi.gov>